

191—48.3(508E) License requirements.**48.3(1) Viatical settlement provider:**

a. To be considered for licensure as a viatical settlement provider, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, a person must complete the viatical settlement provider application form, to be found at the commissioner's Web site, file with the commissioner the completed application in the format prescribed by the commissioner, and include the payment of an application fee in the amount of \$100. An application shall not be deemed filed until all information necessary to process the application has been received by the commissioner. In addition to complying with 2008 Iowa Acts, Senate File 2392, section 3, the applicant also shall provide the following:

(1) Copies of the provider's audited financial statements for the current year and each of the previous five years. At the commissioner's discretion, the applicant also shall provide a copy of the current year's consolidated annual audited financial statement with a financial guarantee from the provider's ultimate controlling person, and copies of the provider's unaudited financial statements for the current year and each of the previous five years;

(2) Evidence that the applicant maintains books and records in compliance with generally accepted accounting principles;

(3) If a legal entity intending to have any partners, officers, members, and designated employees act as viatical settlement providers or viatical settlement brokers under the legal entity's license, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, all completed forms, fees, and information required to be filed under subrule 48.3(2) for each such person named in the application and any supplements to the application;

(4) Biographical affidavits, in a form prescribed by the commissioner, for the following: officers and directors (as listed on the most recent financial statement), key managerial personnel (including any vice presidents or other individuals who will control the operations of the applicant), and individuals with a 10 percent or more beneficial ownership in the applicant who will exercise control over the applicant;

(5) An independent business character report on the individuals listed in subparagraph (4). The business character report shall be filed directly with the commissioner by the independent third party that certified the report. The business character report shall be in a format prescribed by the commissioner and shall not be older than one year prior to the date the application is filed. For purposes of subparagraph (5), "business character report" means a statement certified by an independent third party which has conducted a comprehensive review of the applicant's background and has indicated that the biographical information provided in the report, as completed by the applicant, has no inaccurate or conflicting information. An independent third party is one that has no affiliation with the applicant and is in the business of providing background checks or investigations. Business character reports must be current and shall not be older than one year prior to the date the application is filed. The business character report shall be in the format prescribed by the commissioner;

(6) Initial viatical settlement contracts and disclosure statements that have been or are being submitted for approval and that have been approved or that are approved during the course of the application process;

(7) A copy of the provider trust, pursuant to 48.3(1) "c"; and

(8) A report of any civil, criminal or administrative actions taken or pending against the viatical settlement provider in any state or federal court or agency, regardless of outcome.

b. A form for the antifraud plan that is required to be submitted with an application, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 15, can be found on the commissioner's Web site.

c. The provider trust that is required to be submitted with an application, pursuant to subparagraph 48.3(1) "a"(7), shall be in a format acceptable to the commissioner and shall include the following provisions:

(1) The provider trust cannot be terminated without the prior written consent of the commissioner.

(2) The provider trust is subject to the prior approval of the commissioner.

(3) The provider trust funds shall not be intermingled.

(4) The provider trust funds held shall be identified based on individual policyholders.

(5) The provider trust trustee is obligated to indemnify the provider or the policyholder or both for any lost funds.

(6) The agreement can only be amended or terminated with the prior written consent of the commissioner.

(7) The provider trust trustee shall be a bank or trust company having its principal place of business in the United States.

(8) The provider trust trustee shall be audited annually by independent public accountants and complete the audit report, related financial statements, and opinion on internal controls. All reports shall be available for review by the commissioner.

d. In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement provider complies with the requirements of this subrule.

48.3(2) Viatical settlement broker.

a. To be considered for licensure as a viatical settlement broker, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, a person must complete the viatical settlement broker application form, to be found at the commissioner's Web site, file the completed application in the format prescribed by the commissioner, and include the payment of an application fee in the amount of \$100. In addition to finding compliance with 2008 Iowa Acts, Senate File 2392, section 3, the commissioner also shall find that the applicant:

(1) Has passed the test required by the commissioner or has taken and passed a test on viatical and life settlement contracts required by another state insurance department;

(2) Has provided a report of any civil, criminal or administrative actions taken or pending against the viatical settlement broker in any state or federal court or agency, regardless of outcome, excluding misdemeanor traffic citations and juvenile offenses; and

(3) Has provided proof that the applicant is covered by an errors and omissions policy for an amount of not less than \$100,000 liability per occurrence and not less than \$100,000 total annual aggregate for all claims during the policy period.

b. If a person is a life insurance producer who meets the requirements of 2008 Iowa Acts, Senate File 2392, section 3, the requirements of paragraph 48.3(2) "*a*" shall be deemed to have been met, and the life insurance producer shall file a form, to be found at the commissioner's Web site, and shall include the payment of \$100. The one year that a life insurance producer must be licensed to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 3, shall immediately precede the producer's request for a viatical settlement broker license.

c. A form for the antifraud plan that is required to be submitted with an application, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 15, can be found on the commissioner's Web site.

d. In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement broker complies with the requirements of this subrule.

48.3(3) Governing law where viators are residents of different states. For purposes of this subrule, if there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement contract shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators. If another state does not have a statute or rule substantially similar to Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392, and this rule, the actions related to the viatical settlement contract shall be governed by the law of this state.

48.3(4) License term.

a. A viatical settlement provider or viatical settlement broker who meets the requirements of this rule, unless otherwise denied licensure pursuant to rule 48.10(508E), shall be issued a license.

b. A viatical settlement provider license is valid for one year and automatically terminates on the last day of the month of the anniversary of the issue date unless renewed pursuant to subrule 48.3(6).

c. A viatical settlement broker license is valid for an initial term of one year from the last day of the applicant's birth month following the issuance of the license, and automatically terminates on the last day of the month of the initial term unless renewed pursuant to subrule 48.3(6).

d. A viatical settlement provider license or a viatical settlement broker license may remain in effect for the term of the license plus any renewals, unless the license is revoked or suspended, as long as all required fees are paid in the time prescribed by the commissioner.

e. The license issued to a viatical settlement provider or viatical settlement broker shall be a limited license that allows the licensee to operate only within the scope of its license.

48.3(5) Continuing education for viatical settlement broker.

a. An individual licensed as a viatical settlement broker shall complete 15 credits of approved continuing education during every two license terms. A license term is as set forth in paragraph 48.3(4) "c," and, for purposes of this rule, the two-term continuing education requirement shall be called the "CE reporting term."

b. The required continuing education credits shall include a minimum of:

- (1) Thirteen credits related to viatical settlements and viatical settlement transactions; and
- (2) Two credits in ethics.

c. The viatical settlement broker may submit the same completed credits to the commissioner both to meet the continuing education requirements for the viatical settlement broker license and to meet the continuing education requirements for an applicable insurance producer license.

d. The license of a viatical settlement broker who fails to comply with this continuing education requirement shall terminate.

e. An instructor of an approved continuing education course shall be granted the same credit as a student who completes the continuing education course, and the instructor may receive such credit once during a license term.

f. A viatical settlement broker cannot carry over from one CE reporting term to the next continuing education credits earned in excess of the viatical settlement broker's CE reporting term requirements.

g. A viatical settlement broker may receive continuing education credit for self-study courses. A self-study course is considered completed when the continuing education provider receives the completed examination from the viatical settlement broker.

(1) A viatical settlement broker may receive continuing education credit for self-study courses that are part of a recognized national designation program as described in 191—subrule 11.5(5).

(2) A viatical settlement broker may receive continuing education credits for self-study courses that do not meet the requirement of subparagraph (1) if the viatical settlement broker:

1. Submits an affidavit to the continuing education provider that the examination was independently proctored and was completed without any outside assistance, and
2. Correctly answers at least 70 percent of the questions presented.

h. A viatical settlement broker shall not receive continuing education credit for courses taken prior to the issuance of an initial license.

i. A viatical settlement broker cannot receive continuing education credit for the same course twice in one CE reporting term. A viatical settlement broker cannot receive continuing education credit both for the classroom portion and for the examination portion of a national designation program as defined in 191—subrule 11.5(5).

j. A viatical settlement broker may elect to comply with the continuing education requirements by taking and passing the viatical settlement broker licensing examination.

k. A viatical settlement broker shall demonstrate compliance with the continuing education requirements at the time of license renewal. A viatical settlement broker shall maintain a record of all continuing education courses completed by keeping the original certificates of completion for four years after the end of the year of course completion.

l. For purposes of rule 191—48.3(508E), "credit" means continuing education credit. One credit is 50 minutes of instruction or reading material in an acceptable topic.

m. Viatical settlement broker continuing education courses will be approved in the same manner that insurance continuing education courses are approved pursuant to 191—Chapter 11. The approval

of continuing education providers, the responsibilities of continuing education providers, the prohibited conduct for continuing education providers, and the fees for approval and renewal of continuing education providers and courses shall be the same as those for insurance continuing education courses, continuing education providers, and insurance producers set forth in rules 191—11.9(505,522B) to 191—11.11(505,522B) and 191—11.14(505,522B). The commissioner may enter into a contractual arrangement with a qualified outside vendor to assist the commissioner with any or all continuing education services in the same manner as the commissioner may for insurance continuing education services pursuant to rule 191—11.12(505,522B). The commissioner may audit any continuing education course in the same manner as the commissioner may for insurance continuing education courses pursuant to rule 191—11.13(505,522B).

48.3(6) License renewal. A viatical settlement provider license or a viatical settlement broker license may be renewed as follows:

a. A viatical settlement provider license may be renewed by payment of \$100 within 60 days prior to the expiration date of the license and by demonstration that the viatical settlement provider continues to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 3, and subrule 48.3(1), has provided biographical affidavits not older than one year prior to the renewal date on all persons listed in subparagraph 48.3(1) “a”(4), has provided business character reports for any new persons listed in subparagraph 48.3(1) “a”(4), and has provided the reports required by rule 48.7(508E).

(1) If renewal is approved, the license will be renewed effective the last day of the month of the anniversary of the issue date in the renewal year, will be valid for one year, and will automatically terminate on the last day of the month of the anniversary of the issue date in the following renewal year unless renewed pursuant to subrule 48.3(6).

(2) Viatical settlement providers that had licenses prior to January 1, 2009, shall have a renewal date of January 1.

b. A viatical settlement broker license may be renewed by demonstration of completion of continuing education as required in subrule 48.3(5) and payment of \$100 within 60 days prior to the expiration date of the license. If renewal is approved, the license will be renewed effective the last day of the month of the anniversary of the issue date in the renewal year, will be valid for one year, and will automatically terminate on the last day of the month of the anniversary of the issue date in the following renewal year unless renewed pursuant to subrule 48.3(6).

c. If a legal entity has any partners, officers, members, or designated employees acting as viatical settlement providers or viatical settlement brokers under the legal entity’s license, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, the legal entity must provide all completed forms, fees, and information required to be filed under paragraphs 48.3(6) “a” and “b” for each such person named in the application, or in any supplements to the application, and must provide any deletions to the list of names that was provided with the original application. If there are any new partners, officers, members, and designated employees that the legal entity intends will act as viatical settlement providers or viatical settlement brokers under the legal entity’s license, the legal entity shall provide for each such person the forms, information and fees required by subrule 48.3(2).

d. If a viatical settlement provider or viatical settlement broker fails to comply with the renewal procedures within the time prescribed, or a viatical settlement provider fails either to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 3, and subrule 48.3(1) or to submit the reports required in rule 48.7(508E), such nonpayment or failure shall result in lapse of the license.

e. A licensed viatical settlement broker who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance may request from the commissioner a waiver of renewal procedures. Such viatical settlement broker may also request a waiver of any examination requirement or any other penalty or sanction imposed for failure to comply with renewal procedures.

48.3(7) License reinstatement.

a. A viatical settlement broker may reinstate an expired license up to 12 months after the license expiration date by proving that during the CE reporting term the viatical settlement broker met the CE requirements found in subrule 48.3(5), and by paying to the commissioner a reinstatement fee and license

renewal fee. A viatical settlement broker who fails to apply for license reinstatement within 12 months of the license expiration date must apply for a new license.

b. A viatical settlement broker who has surrendered a license for a nondisciplinary reason and stated an intent to exit the viatical settlement business may file a request to reactivate the license. The request must be received by the commissioner within 90 days of the date the license was placed on inactive status. The request will be granted if the former viatical settlement broker is otherwise eligible to receive the license. If the request is not received within 90 days, the viatical settlement broker must apply for a new license.

48.3(8) *Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.*

a. The term “reinstatement” as used in this subrule means the reinstatement of a suspended license. The term “reissuance” as used in this subrule means the issuance of a new license following either the revocation of a license or the forfeiture of a license in connection with a disciplinary matter. This subrule does not apply to the reinstatement of an expired license.

b. Any viatical settlement broker whose license has been revoked or suspended by order, or who forfeited a license in connection with a disciplinary matter, may apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

(1) All proceedings for reinstatement or reissuance shall be initiated by the applicant who shall file with the commissioner an application for reinstatement or reissuance of a license.

(2) An application for reinstatement or reissuance shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis of revocation, suspension or forfeiture of the applicant’s license no longer exists and that it will be in the public interest for the application to be granted. The burden of proof to establish such facts shall be on the applicant.

(3) A viatical settlement broker may request reinstatement of a suspended license prior to the end of the suspension term.

(4) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement or reissuance may occur, or if the license was forfeited, an initial application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order of the suspension (notwithstanding 191—paragraph 10.10(2) “c”), revocation, or acceptance of the forfeiture of a license.

c. All proceedings upon the application for reinstatement or reissuance, including matters preliminary and ancillary thereto, shall be held in accordance with Iowa Code chapter 17A. Such application shall be docketed in the original case in which the original license was suspended, revoked, or forfeited, if a case exists.

d. An order of reinstatement or reissuance shall be based upon a written decision which incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner or the commissioner’s designee deems desirable, which may include one or more of the types of disciplinary sanctions provided by this chapter or by Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392. The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapter 22.

e. A request for voluntary forfeiture of a license shall be made in writing to the commissioner. Forfeiture of a license is effective upon submission of the request unless a contested case proceeding is pending at the time the request is submitted. If a contested case proceeding is pending at the time of the request, the forfeiture becomes effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

f. A license may be voluntarily forfeited in lieu of compliance with an order of the commissioner or the commissioner’s designee with the written consent of the commissioner. The forfeiture becomes effective when and upon such conditions as required by order of the commissioner, which may include

one or more of the types of disciplinary sanctions provided by this chapter or by Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392.

g. When a viatical settlement broker's license has been suspended for a period of time which extends beyond the viatical settlement broker's license expiration date, the license will terminate at the license expiration date, and the viatical settlement broker must request reinstatement pursuant to subrule 48.3(7). If suspension for a period of time ends prior to the viatical settlement broker's license expiration date, the commissioner shall reinstate the license at the end of the suspension period pursuant to paragraph 48.3(8) "b." The commissioner is not prohibited from bringing an additional immediate action if the viatical settlement broker has engaged in misconduct during the period of suspension.

48.3(9) *Duty to notify commissioner of cessation of business in the state.* If a viatical settlement provider intends to cease business in Iowa, it must notify the commissioner of those intentions and of its plan of operation for such cessation at least 180 days before the cessation shall occur. This requirement is not meant to imply that a company must continue to accept new viatical or life settlement business during the 180-day period.

48.3(10) *Duty to notify commissioner of changes.*

a. A viatical settlement provider shall provide to the commissioner any new or revised information about officers, stockholders holding 10 percent or more of the stock of the company, partners, directors, members or designated employees within 30 days of the date the addition or revision occurred.

b. A viatical settlement provider or viatical settlement broker shall inform the commissioner in writing of any change of name or address within 30 days of the date of such change. In addition, a viatical settlement provider shall provide the commissioner with 30 days' notice of the cancellation or nonrenewal of a fidelity bond required for licensure under subrule 48.3(1) and the name of the carrier that will be providing coverage subsequent to such cancellation or nonrenewal.

c. A viatical settlement provider or viatical settlement broker shall report to the commissioner any administrative action taken against the viatical settlement provider or viatical settlement broker in another state or federal jurisdiction or by another governmental agency in this state within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent to the order, or other relevant legal documents. Within 30 days of the initial pretrial hearing date, a viatical settlement provider or viatical settlement broker shall report to the commissioner any criminal prosecution of the viatical settlement provider or viatical settlement broker taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

48.3(11) *Commissioner may use outside assistance.* In order to assist with the commissioner's duties, the commissioner may contract with a nongovernmental entity, including, but not limited to, the National Association of Insurance Commissioners (NAIC) or any affiliate or subsidiary the NAIC oversees, to perform any ministerial functions related to licensing of viatical settlement providers or viatical settlement brokers that the commissioner deems appropriate including, but not limited to, the collection of fees.